

AMENDED IN SENATE JANUARY 16, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

**ASSEMBLY BILL**

**No. 5**

**Introduced by Assembly Member Keeley**  
*(Principal coauthor: Senator Bowen)*

January 9, 2001

---

An act to amend Sections 335 and 341.2 of, to add ~~Section 352~~  
~~Sections 352 and 352.5~~ to, and to repeal and add ~~Sections 337 and 338~~  
~~Section 337~~ of, the Public Utilities Code, relating to public utilities, and  
declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 5, as amended, Keeley. Electrical restructuring: Oversight  
Board: Independent System Operator: ~~Power Exchange~~.

(1) The existing restructuring of the electrical services industry  
within the Public Utilities Act provides for the authorization of direct  
transactions between electricity suppliers and end use customers and for  
the establishment of an Independent System Operator and a Power  
Exchange as separately incorporated public benefit, nonprofit  
corporations. An Electricity Oversight Board is also established to  
oversee the Independent System Operator and the Power Exchange.  
The Oversight Board has the exclusive right to approve procedures for  
the election, submission for confirmation, and qualification for  
Independent System Operator and Power Exchange governing board  
members, all of whom are required to be electricity consumers in the  
area served by the Independent System Operator and the Power  
Exchange. The governing boards are required to include  
representatives of investor-owned utility transmission owners, publicly

owned utility transmission owners, nonutility electricity sellers, public buyers and sellers, private buyers and sellers, industrial end users, commercial end users, residential end users, agricultural end users, public interest groups, and nonmarket participant representatives. A simple majority of each board is required to consist of persons who are themselves unaffiliated with electric generation, transmission, or distribution corporations. The structural composition of the governing boards existing on July 1, 1999, is required to remain in effect until an agreement with a participating state is legally in effect. However, prior to that agreement, the state retains the right to change each governing board into a nonstakeholder board. If that legislative change occurs, revised bylaws are required to be filed with the Federal Energy Regulatory Commission under a specified provision of federal law.

This bill, instead, would require that, within 90 days of the effective date of the bill, the existing Independent System Operator ~~and Power Exchange~~ governing ~~boards~~ *board* be replaced by ~~3-member~~ *a 5-member* independent governing ~~boards~~ *board* of directors appointed by the Governor.

The bill would prohibit a member of the independent governing board appointed by the Governor from being affiliated with any actual or potential participant in any market administered by the Independent System Operator ~~or the Power Exchange~~.

The bill would prohibit the Independent System Operator from entering into a multistate entity or a regional organization unless that entry is approved by the board. Since a violation of the act is a crime, this bill would impose a state-mandated local program by establishing a new crime.

The bill would require the board to require the articles of incorporation and bylaws of the Independent System Operator ~~and the Power Exchange~~ to be revised, and to make filings with the Federal Energy Regulatory Commission as the board determines to be necessary.

*The bill would require the Independent System Operator to make publicly available a list of all power plants located in the state that are not operational due to a planned or unplanned outage, make the list available over the Internet, and update the list daily.*

The bill would make other, conforming changes in existing law.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 335 of the Public Utilities Code is  
2 amended to read:

3 335. In order to ensure that the interests of the people of  
4 California are served, a five-member Electricity Oversight Board  
5 is hereby created as provided in Section 336. For purposes of this  
6 chapter, any reference to the Oversight Board shall mean the  
7 Electricity Oversight Board. Its functions shall be all of the  
8 following:

9 (a) To oversee the Independent System Operator and the Power  
10 Exchange.

11 (b) (1) To exercise the exclusive right to decline to confirm the  
12 appointments of members of the governing ~~boards~~ board of the  
13 Independent System Operator ~~and the Power Exchange~~.

14 (2) *To determine the composition and terms of service and to*  
15 *exercise the exclusive right to decline to confirm the appointments*  
16 *of specific members of the governing board of the Power*  
17 *Exchange.*

18 (c) To serve as an appeal board for majority decisions of the  
19 Independent System Operator governing board, as they relate to  
20 matters subject to exclusive state jurisdiction, as specified in  
21 Section 339.

22 (d) *Those members of the Power Exchange governing board*  
23 *whose appointments the Oversight Board has the exclusive right*  
24 *to decline to confirm include proposed governing board members*  
25 *representing agricultural end users, industrial end users,*  
26 *commercial end users, residential end users, end users at large,*  
27 *nonmarket participants, and public interest groups.*

28 SEC. 2. Section 337 of the Public Utilities Code is repealed:

SEC. 3. Section 337 is added to the Public Utilities Code, to read:

337. (a) Within 90 days of the effective date of the act adding this section, the existing Independent System Operator governing board shall be replaced by a ~~three-member~~ *five-member* independent governing board of directors appointed by the Governor. Any reference in this chapter or in any other provision of law to the Independent System Operator governing board means the independent governing board appointed under this subdivision.

(b) A member of the independent governing board appointed under subdivision (a) may not be affiliated with any actual or potential participant in any market administered by the Independent System Operator.

(c) (1) All appointments shall be for one-year terms.

(2) There is no limit on the number of terms that may be served by any member.

(d) The Oversight Board shall require the articles of incorporation and bylaws of the Independent System Operator to be revised in accordance with this section, and shall make filings with the Federal Energy Regulatory Commission as the Oversight Board determines to be necessary.

~~SEC. 4. Section 338 of the Public Utilities Code is repealed.~~

~~SEC. 5. Section 338 is added to the Public Utilities Code, to read:~~

~~338. (a) Within 90 days of the effective date of the act adding this section, the existing Power Exchange governing board shall be replaced by a three-member independent governing board of directors appointed by the Governor. Any reference in this chapter or in any other provision of law to the Power Exchange governing board means the independent governing board appointed under this subdivision.~~

~~(b) A member of the independent governing board appointed under subdivision (a) may not be affiliated with any actual or potential participant in any market administered by the Power Exchange.~~

~~(c) (1) All appointments shall be for one-year terms.~~

~~(2) There is no limit on the number of terms that may be served by any member.~~

~~(d) The Oversight Board shall require the articles of incorporation and bylaws of the Power Exchange to be revised in accordance with this section, and shall make such filings with the Federal Energy Regulatory Commission as the Oversight Board determines to be necessary.~~

~~SEC. 6.~~

SEC. 4. Section 341.2 of the Public Utilities Code is amended to read:

341.2. The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) applies to meetings of the Oversight Board. In addition to the allowances of that act, the Oversight Board may hold a closed session to consider the appointment of one or more candidates to the governing board of the Independent System Operator or the Power Exchange, *deliberate on matters involving the removal of a member of the governing board of the Power Exchange*, or to consider a matter based on information that has received a grant of confidential status pursuant to regulations of the Oversight Board, provided that any action taken on such a matter shall be taken by vote in an open session.

~~SEC. 7.~~

SEC. 5. Section 352 is added to the Public Utilities Code, to read:

352. The Independent System Operator may not enter into a multistate entity or a regional organization as authorized in Section 359 unless that entry is approved by the Oversight Board.

~~SEC. 8.~~

SEC. 6. Section 352.5 is added to the Public Utilities Code, to read:

352.5. (a) *The Independent System Operator shall make publicly available a list of all power plants located in the state that are not operational due to a planned or unplanned outage.*

(b) *For the purposes of complying with subdivision (a), the Independent System Operator shall make the list available over the Internet.*

(c) *The Independent System Operator shall update the list established pursuant to subdivision (a) on a daily basis.*

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school  
2 district will be incurred because this act creates a new crime or  
3 infraction, eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section 17556 of  
5 the Government Code, or changes the definition of a crime within  
6 the meaning of Section 6 of Article XIII B of the California  
7 Constitution.

8 ~~SEC. 9.~~

9 *SEC. 8.* This act is an urgency statute necessary for the  
10 immediate preservation of the public peace, health, or safety  
11 within the meaning of Article IV of the Constitution and shall go  
12 into immediate effect. The facts constituting the necessity are:

13 In order to make the Independent System Operator ~~and the~~  
14 ~~Power Exchange~~ more accountable to the people of this state by  
15 eliminating stakeholder governing boards, thereby acting to  
16 mitigate the state's current energy crisis, it is necessary for this act  
17 to take effect immediately.

O

